

St. Louis-San Francisco Railway Company

906 Olive Street — St. Louis, Missouri 63101 — (314) 241-7800

Donald E. Engle
Vice President and General Counsel

July 14, 1978

8-200A017

RECORDATION NO. 9588 Filed & Recorded
JUL 19 1978 - 10 22 AM

Secretary INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

RECORDATION NO. 8 Filed & Recorded
JUL 19 1978 - 10 22 AM
ICC
INTERSTATE COMMERCE COMMISSION

Dear Sir:

Herewith for filing pursuant to Section 20c of the Interstate Commerce Act are executed counterparts of the following documents:

- (1) Purchase Agreement dated as of June 1, 1978, between St. Louis-San Francisco Railway Company, Vendee, and General Motors Corporation (Electro-Motive Division), Vendor.
- (2) Assignment of Purchase Agreement dated as of June 1, 1978, among St. Louis-San Francisco Railway Company, Assignor, The Connecticut Bank and Trust Company, Assignee, and General Motors Corporation (Electro-Motive Division).
- (3) Lease of Railroad Equipment dated as of June 1, 1978, between The Connecticut Bank and Trust Company, Lessor, and St. Louis-San Francisco Railway Company, Lessee.

The names and addresses of the parties to the documents referred to in this letter are as follows:

Assignee-Lessor

The Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115

Builder-Vendor

General Motors Corporation (Electro-Motive Division)
LaGrange, Illinois 60525

Vendee-Assignor-Lessee

St. Louis-San Francisco Railway Company
3253 East Trafficway
Springfield, Missouri 65802

RECEIVED

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I.C.C.
FEE OPERATIONS BR.

Handwritten signature: C. K. Koppeler

July 14, 1978

The following railroad equipment is covered by the documents referred to in this letter:

| <u>Type</u> | <u>Quantity</u> | <u>Lessee's Road Numbers (Both Inclusive)</u> |
|--|-----------------|---|
| 3,000 h.p. Diesel Electric Locomotive | 8 | 950-957 |

Such equipment bears the name of the Lessee (St. Louis-San Francisco Railway Company), the road numbers set forth above, and the following legend: "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Please file and record the documents referred to in this letter and cross-index them under the names of the parties listed above. A check for \$100 is enclosed for payment of the recording fee.

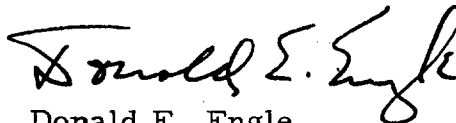
Please return to the delivering messenger the following items:

(a) All counterparts of the documents referred to in this letter that are not required for filing, stamped with the appropriate recordation number.

(b) A stamped copy of this letter.

(c) Your fee receipt and letter confirming recordation, addressed to Robert C. Nash, Esq., Messrs. Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Very truly yours,


Donald E. Engle

DEE:jj
Enclosures

(2)

[CS&M Ref: 5415-001]

9588
RECORDATION NO. Filed & Recorded
JUL 19 1978 4/29 AM
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of June 1, 1978

Between

THE CONNECTICUT BANK AND TRUST COMPANY as Trustee,
as Lessor,

and

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
as Lessee.

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of June 1, 1978, between THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation (the "Lessor"), not individually but solely in its capacity as Trustee under a Trust Agreement dated as of the date hereof with Connell Rice & Sugar Co., Inc. (Connell Leasing Company Division) and Northwestern National Bank of Minneapolis (collectively, the "Owners"), and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Missouri corporation ("the Lessee").

WHEREAS the Lessee has assigned to the Lessor, pursuant to an Assignment of Purchase Agreement dated as of the date hereof ("the Assignment"), certain of its interests in a Purchase Agreement dated as of the date hereof ("the Purchase Agreement"), between the Lessee and GENERAL MOTORS CORPORATION (Electro-Motive Division) ("the Builder");

WHEREAS the Lessor has accepted the Assignment and proposes to purchase from the Builder such units of railroad equipment described in Schedule A hereto (hereinafter called the Units) as are delivered and accepted under the terms of this Lease;

WHEREAS the Lessee desires to lease from the Lessor such number of Units as are so delivered and accepted hereunder, at the rentals and upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, the Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional, and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or the Builder or otherwise; nor, except

as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever; provided, however, that the Lessee shall not be foreclosed from exercising such other legal rights and remedies as it may have against the Lessor.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of each of the Units. The Lessee will cause its agent or an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to execute and deliver to the Lessor a certificate of acceptance in substantially the form annexed as Annex C to the Purchase Agreement ("Certificate of Acceptance") stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessor will cause each Unit to be delivered to the Lessee at the point or points specified in Schedule A hereto. Units shall not be delivered to or accepted hereunder by the Lessee subsequent to June 30, 1979.

3. Rentals. (a) With respect to each Unit delivered and accepted hereunder prior to January 1, 1979, the Lessee will pay to the Lessor, as rental for each such Unit, (i) an interim installment of rent payable on January 3, 1979, and (ii) 30 consecutive semiannual installments payable on January 3 and July 3 in each year, commencing July 3, 1979. The interim installment of rent shall be in an amount equal to .0250% of the Purchase Price (as hereinafter defined) of each such Unit for each day from the Closing Date under the Purchase Agreement with respect to such Unit to, but not including, January 3, 1979. The 30 consecutive semiannual rental installments shall each be in an amount equal to 4.214264% of the Purchase Price of each Unit then subject to this Lease.

(b) With respect to each Unit delivered and accepted hereunder on or after January 1, 1979, and on or before June 30, 1979, the Lessee will pay to the Lessor, as rental for each such Unit, (i) an interim installment of rent payable on July 3, 1979, and (ii) 29 consecutive semiannual installments payable on January 3 and July 3 in each year, commencing January 3, 1980. The interim installment of rent and the 29 consecutive semiannual rental installments shall each be in such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic yields and cash flows that would have been realized by the Lessor if such Unit had been accepted prior to January 1, 1979.

For purposes of this Lease, Purchase Price shall mean the base price per Unit as set forth in Schedule A hereto plus or minus 10%, which base price is subject to such increase or decrease as may be agreed upon by the Builder, the Lessor and the Lessee.

If any of the rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and all other days on which banking organizations in St. Louis, Missouri, Hartford, Connecticut or New York, New York, are authorized or obligated to remain closed.

The Lessor hereby instructs the Lessee to make all the payments provided for in this Lease directly to it at such address as shall from time to time be specified in writing by the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds.

4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 11 hereof) shall survive the expiration of the term of this Lease.

5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished Lessor an opinion of counsel to the effect set forth in subparagraph (b)(i) of § 15 hereof in respect of such filing, recordation and deposit.

Except as provided in the preceding paragraph, the Lessee will not allow the name of any person, association or

corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes or foreign withholdings (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured solely by net income based on such receipts, or gross receipts taxes [other than gross receipts in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other taxing jurisdiction, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or registration, documentation and license fees, assessments, duties, charges, fines or penalties (all such expenses, taxes, withholdings, registration, documentation and license fees, assessments, duties, charges, fines and penalties being hereinafter called Impositions) hereafter levied, imposed or assessed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment delivery or transfer of title under the terms hereof, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein, and from and against which the Lessee agrees to indemnify, protect, defend, save and keep harmless the Lessor on an after-tax basis. The Lessee will also pay promptly all Impositions which may be levied, imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely

affect the title, property or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor with interest thereon at the Prime Rate defined in the Purchase Agreement. The obligations of the Lessee to pay all Impositions shall be deemed a rental obligation.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor in such Units or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor; provided, however, that if the Lessee is not permitted to make such reports on behalf of the Lessor, it will so notify the Lessor and will furnish to the Lessor all information necessary for the Lessor to make such reports.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action or failure to act by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence, satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

7. Maintenance; Payment for Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

The Lessee, at its own cost and expense, may from

time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with the next paragraph.

Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are not readily removable and are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor.

In the event that during the term of this Lease or until such Unit shall have been returned pursuant to § 14 hereof, any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee or the Lessor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise under authority of law and such taking or requisition shall have exceeded 120 days or shall extend beyond the term of this Lease (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice or, within 60 days if such Unit is being returned under § 14 hereof, the Lessee shall pay to the Lessor an amount equal to the accrued rental in respect of such Unit to and including the date payment is due pursuant to this sentence plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date such payment is due in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate. The Lessor shall, after payment by the Lessee of a sum equal to the Casualty Value of any Unit which shall

have suffered a Casualty Occurrence, and any other amounts then due hereunder, execute and deliver to the Lessee a bill of sale (without warranties) for each Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor. In the event that any Unit is taken or requisitioned under authority of law as set forth in the first sentence of this paragraph but such taking does not exceed 120 days nor extend beyond the end of the term of this Lease, the Lessee shall notify the Lessor of such taking or requisition and all the Lessee's obligations under this Lease with respect to such Unit, including, but not limited to, rental with respect thereto pursuant to § 3 hereof, shall continue as if such taking or requisition had not occurred. All payments received by the Lessor or the Lessee in respect of such taking or requisition for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee.

With respect to Units delivered and accepted hereunder prior to January 1, 1979, the Casualty Value of each Unit as of any rental payment date or such other date on which such Casualty Value is payable shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such rental payment date or such other date:

| <u>Date</u> | <u>Percentage</u> | <u>Date</u> | <u>Percentage</u> | <u>Date</u> | <u>Percentage</u> |
|-----------------|-------------------|-----------------|-------------------|-----------------|-------------------|
| January 3, 1979 | 108.63978 | January 3, 1984 | 95.48134 | January 3, 1989 | 58.08550 |
| July 3, 1979 | 108.04800 | July 3, 1984 | 86.79206 | July 3, 1989 | 55.40718 |
| January 3, 1980 | 109.21972 | January 3, 1985 | 84.88314 | January 3, 1990 | 52.18742 |
| July 3, 1980 | 108.48724 | July 3, 1985 | 83.00116 | July 3, 1990 | 49.34496 |
| January 3, 1981 | 108.81666 | January 3, 1986 | 80.66466 | January 3, 1991 | 46.00194 |
| July 3, 1981 | 107.95980 | July 3, 1986 | 71.41276 | July 3, 1991 | 42.99484 |
| January 3, 1982 | 107.50042 | January 3, 1987 | 68.87820 | January 3, 1992 | 39.54802 |
| July 3, 1982 | 99.35408 | July 3, 1987 | 66.49070 | July 3, 1992 | 36.36958 |
| January 3, 1983 | 98.39884 | January 3, 1988 | 63.66626 | January 3, 1993 | 32.81404 |
| July 3, 1983 | 97.04412 | July 3, 1988 | 61.13808 | July 3, 1993 | 29.51356 |
| | | | | and thereafter. | 26.00000 |

Casualty Values with respect to each Unit delivered and accepted hereunder on or after January 1, 1979, will be set forth in a supplemental schedule. Such Casualty Values will be computed on the basis of the assumptions used by the Lessor in originally evaluating this transaction.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after acceptance thereof by the Lessee hereunder.

The Lessee will procure and maintain at its sole cost and expense at all times during the continuance of this Lease (and thereafter so long as any Unit is at the risk of the Lessee), insurance coverage for comprehensive general liability, physical damage, theft, fire with extended coverage ("property insurance") and any other insurance as may be reasonably required by the Lessor for the benefit of the Lessor as its interests appear, in amounts, against risks, in form and with insurance companies or underwriters as shall be satisfactory to the Lessor from time to time and shall deliver to the Lessor a certificate of the issuer of such insurance coverage setting forth a description of the terms thereof; provided, however, that, in the case of comprehensive general liability insurance, such insurance shall be in such amounts, against such risks and with such insurance companies or underwriters as shall be consistent with prudent industry practice, and that, in the case of property insurance, the Lessee may self-insure to the extent it self-insures equipment of a nature similar to the Units and to the extent such self-insurance is consistent with prudent industry practice. Without limiting the foregoing, each insurance policy shall provide that it will not be invalidated as against the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Lessee and that it may be altered or cancelled by the insurer only after not less than 30 days advance written notice to the Lessor. All liability policies shall name the Lessor as an additional insured person. All policies covering loss or damage to the Units shall provide that payment thereunder for any such loss or damage shall be made to the Lessor and the Lessee as their interests may appear. If the Lessee shall fail to provide and furnish any of said insurance, the Lessor may, after reasonable notice to Lessee and a reasonable opportunity under the circumstances to correct or provide such insurance, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor for all outlays for such insurance with interest thereon computed at the rate of 12% per annum or such lesser maximum rate as may be permitted by applicable law.

Any property insurance proceeds as the result of insurance carried by the Lessee or condemnation payments

received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such property insurance proceeds or condemnation payments which are in excess of the Casualty Value, any such property insurance proceeds and any such excess condemnation payments shall remain the property of the Lessor. All property insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee, provided no Event of Default shall have occurred and be continuing hereunder, upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor shall have the rights by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this lease.

The Lessee will furnish to the Lessor, when and as published, a copy of each quarterly and annual report to stockholders and a copy of each prospectus issued in connection with any public offering of the Lessee's securities. The Lessee will also furnish to the Lessor a copy of each quarterly and annual financial report filed by the Lessee with the Interstate Commerce Commission.

Each set of financial documents delivered to the Lessor shall be accompanied by a certificate (dated the date of delivery) of the President or a Vice President of the Lessee confirming that as at the date of such certificate no Event of Default as defined herein has occurred and is continuing, or if any such Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Lessee has taken or proposes to take with respect thereto.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Articles 9 and 10 of the Purchase Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing hereunder, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any

power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

The Lessor (which term as used herein shall include the Lessor in both its individual and fiduciary capacities and the Lessor's successors, assigns, agents and servants) shall have no responsibility or liability to the Lessee, its successors or assigns, or to any other person, with respect to any or all liabilities (as "liabilities" is hereinafter defined), and the Lessee hereby assumes liability for, and hereby agrees, at its own cost and expense, to indemnify, protect, defend, save and keep harmless the Lessor from and against, any and all liabilities, other than the Lessor's obligation to pay to the Builder the Purchase Price for all Units delivered and accepted in accordance with the terms hereof. The term "liabilities" as used herein shall include any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against the Lessor, in any way relating to or arising or alleged to arise out of this Lease, the Purchase Agreement, the Assignment or the manufacture, purchase, acceptance, rejection, ownership, transporting, delivery, leasing, possession, control, use, operation, condition, testing, servicing, maintenance, repair, improvement, replacement, storage, sale, return or other disposition of the Units (including, without limitation, (a) any inadequacy or deficiency or defect therein, including latent defects, whether or not discoverable by the Lessor or the Lessee, or any claim for patent, trademark or copyright infringement, (b) any accident in connection therewith resulting in damage to property or injury or death to any person, including but not limited to, employees and agents of the Lessee, (c) any strict liability in tort and (d) any interruption of service, loss of business or consequential damages resulting therefrom). The Lessee agrees to give the Lessor and the Lessor agrees to give the Lessee prompt written notice of any of the liabilities hereby indemnified against. The Lessee's obligations under this paragraph shall be those of a primary obligor whether or not the Lessor is

also indemnified with respect to the same matter by any other person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease and the expiration or termination of this Lease. Nothing in this § 9 shall constitute a guarantee by the Lessee of the residual value of any Unit or of any indebtedness for borrowed money incurred by the Lessor and secured by an assignment of rentals payable hereunder pursuant to § 12 hereof.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than reports or returns with respect to taxes for which the Lessee is not responsible pursuant to § 6 hereof) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

(a) default shall be made in payment of any amount payable under this Lease and such default shall continue for 10 days;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Purchase Agreement, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(d) any representation or warranty made by the Lessee hereunder or in any certificate or statement furnished by the Lessee pursuant to or in connection with the Purchase Agreement or this Lease proves untrue in any material respect as of the date of issuance or making thereof;

(e) a petition for reorganization under Sec-

tion 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(f) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including without limitation net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as provided in this clause (ii); and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of such Units may be, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of the Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, com-

pounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; provided, however, that if the Lessee shall dispute the estimate of the Lessor under this clause (A) within 10 days after delivery to it of a written notice thereof, then such value shall be determined by an Appraiser (as defined in § 13 hereof) plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return (computed in accordance with the assumptions utilized by the Lessor in estimating its net return upon entering into this Lease, as such assumptions are set forth in § 17 hereof) and that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Tax Benefits (as defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that if the Lessee shall dispute the estimate of the Lessor under this clause (y) within 10 days after delivery to it of a written notice thereof, then such value shall be determined by an Appraiser; and provided, further, that in the event the Lessor shall have sold any Unit, the

Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (B) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including without limitation all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall upon notice from the Lessor forthwith deliver possession of the Units to the Lessor. Each Unit returned to the Lessor pursuant to this § 11 shall (i) be in the same operating

order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 7 hereof and have removed therefrom any such device not so considered an accession. For the purpose of delivering possession of any Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Units have been interchanged to return the Units so interchanged) transport or cause the Units to be transported to such point or points as the Lessor may reasonably designate;

(b) permit the Lessor to store such Units on such tracks (i) for a period of 270 days (commencing on the date on which the last such Unit is delivered into storage) at the risk of the Lessee and without charge for insurance, rent or storage and (ii) after the termination of said period at the risk of the Lessor at the Lessee's normal storage charges, which the Lessor agrees to pay; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its Affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During the storage period provided for in clause (b)(i) above, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be not assignable to any person in whole or in part by the Lessor without the consent of the Lessee or by the Lessee without the consent of the Lessor, except that the Lessor may, without the consent of the Lessee, assign all or any part of its interest in this Lease to any banking or financial institution acting on its own behalf or as trustee and having a combined capital and surplus of at least \$50 million; provided, however, that no such assignee shall have any interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. Any such assignment by the Lessor may be either absolute or as collateral security for indebtedness of the Lessor. No assignment shall be binding on the Lessee until written notice thereof has been given to the Lessee by the Lessor.

No assignee for collateral purposes shall be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof; but on the contrary, the Lessee by its execution hereof acknowledges and agrees that notwithstanding any such assignment each and all such covenants, agreements, representations and warranties of the Lessor shall survive any such assignment and shall be and remain the sole liability of the Lessor and of every person, firm or corporation succeeding (by merger, consolidation, purchase of assets or otherwise) to all or substantially all of the business assets or goodwill of the Lessor. Without limiting the foregoing, the Lessee further acknowledges and agrees that from and after the receipt by the Lessee of written notice of an assignment from the Lessor or from the assignee: (i) all rents and other sums which are the subject matter of the assignment shall be paid to the assignee thereof at the place of payment designated in the notice, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease or by applicable law are permitted or provided to be exercised by the Lessor.

This Lease and the Lessee's right and interest herein, and in the options to renew this Lease and in the right of first refusal to purchase the Units as herein provided, shall be completely prior to each and every deed of trust or mortgage or other security instrument and each such instrument, whether heretofore, now or hereafter in existence shall in all respects be subject and subordinate to this Lease and the Lessee's right and interest herein and in such renewals, rights, obligations and options.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, except as herein provided. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or resulting from claims against the Lessor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units. The Lessee agrees not to use, assign or permit the assignment of any Unit to service involving the regular operation and maintenance outside the United States of America. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal not a surety.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will

not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option, Right of First Refusal.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or the extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all, but not less than all the Units then covered by this Lease, for up to three additional two-year periods commencing on the scheduled expiration of the original term or the extended term of this Lease, as the case may be, provided that the aggregate of such extended term or terms shall not exceed six years, with semiannual rental payments equal to the Fair Market Rental Value, as hereinafter defined, of each such Unit then subject to this Lease at the commencement of such renewal period, payable in arrears, on January 3 and July 3 in each year of such extended term.

Fair Market Rental Value for the purposes of this § 13 shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, the cost of removal from the location of current use shall not be a reduction from such value. If on or before the four months after the delivery of such written notice of extension of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of such Units for the purposes of this § 13, such value shall be determined by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. If a single appraiser is appointed, his determination of Fair Market Value shall be final. If three appraisers are appointed, the determination of the

appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and the average shall be final. The expenses and fees of the Appraiser shall be borne by the Lessee.

The Lessor agrees that during the period ending six months prior to the last day of the original term or any extended term of this Lease (provided no Event of Default hereunder shall have occurred and be continuing) in respect of any Units it will not sell such Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase all such Units at the same price and on the same terms as specified in such notice. Such opportunity of the Lessee shall continue for a period of 20 business days, commencing on the date it receives such notice from the Lessor. Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor (but without any other warranties).

§ 14. Return of Units upon Expiration of Term.

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, and in any event within 60 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of all such Units to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Units on such tracks for a period not exceeding 150 days (commencing on the date on which the last such Unit is delivered into storage) and transport the same, at any time within such 150-day period, to any reasonable place on lines of railroad, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or

of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application of any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 7 hereof and have removed therefrom any such device not so considered an accession.

§ 15. Representations and Warranties; Opinions of Counsel. (a) The Lessee represents and warrants for the benefit of the Lessor that:

(i) the Lessee is a corporation duly organized and validly existing in good standing under the laws of its state of incorporation and is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease, the Purchase Agreement, and the Assignment;

(ii) the Lessee has the full power, authority and legal right to carry on its business as now conducted and to enter into and perform its obligations under this Lease, the Purchase Agreement and the Assignment, and the execution, delivery and performance of this Lease, the Purchase Agreement and the Assignment have been duly authorized by all necessary corporate action on the part of the Lessee;

(iii) the Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which will materially adversely affect its ability to perform its obligations under this Lease, the Purchase Agreement or the Assignment;

(iv) neither the execution and delivery of this Lease, the Purchase Agreement or the Assignment nor the consummation of the transaction herein or therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality, or of the corporate charter or the by-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is now a party or by which it may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(v) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units;

(vi) no authorization or approval is required from any governmental or public body with respect to the entering into or performance by the Lessee of this Lease, the Purchase Agreement or the Assignment;

(vii) this Lease, the Purchase Agreement and the Assignment have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery thereof by the other parties thereto, are legal, valid and binding agreements, enforceable in accordance with their terms; subject as to enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(viii) on or prior to the First Delivery Date (as defined in clause (b) below) this Lease, the Purchase Agreement and the Assignment shall have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing or recordation will be necessary to protect the Lessor's interest in and to the Units under the Lease;

(ix) at the time of the delivery and acceptance of the Units under this Lease, no material adverse change shall have occurred in the financial condition of the Lessee since the date of the Lessee's last published annual report; and

(x) the financial statements contained in the Railroad Annual Report Form R-1 (or Form A, as the case may be) of the Lessee for the three fiscal years ended December 31, 1977, correctly set forth the financial condition of the Lessee as of the dates and the results of operations thereof for the periods covered thereby and the Lessee has furnished the Lessor with copies of such financial statements.

(b) The obligations of the parties hereto to enter into a lease pursuant hereto of the Units shall be subject to the receipt by each such party on or prior to the first date of delivery of any Unit pursuant to the Purchase Agreement and the Assignment (such date being herein called the First Delivery Date) of the following documents, each dated the First Delivery Date:

(i) a certificate of the President or a Vice President of the Lessee to the effect that (a) the representations and warranties set forth in § 15(a) hereof are true and correct as of the First Delivery Date, (b) this Lease is in full force and effect and (c) no Event of Default has occurred or is continuing hereunder;

(ii) the written opinion of counsel for the Lessee (who may be an employee of the Lessee), addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect set forth in clauses (a)(i), (ii), (iv), (v), (vi), (vii) and (viii);

(iii) a certificate of the Chief Mechanical Officer of the Lessee as to his opinion that each Unit will have a useful economic life of at least 19.5 years and an anticipated residual value at the end of the basic lease term in respect of such Unit, of at least 20% of the Purchase Price thereof;

(iv) the written opinion of counsel for the Lessor (who may be an employee of the Lessor), addressed to the Lessee, to the effect that:

A. the Lessor is a corporation legally incorporated and validly existing, in good standing under the laws of the jurisdiction of its incorporation with corporate power to enter into this Lease; and

B. this Lease and the Assignment have been duly authorized, executed and delivered by the Lessor and constitute the legal, valid and binding agreement of the Lessor enforceable in accordance with their respective terms.

In giving the opinions specified in subparagraphs (b)(ii) and (iv) of this § 15, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Purchase Agreement and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Income Taxes. The Lessor and the Lessee agree that the Lessor has assumed that it will receive in this transaction the benefit of the following assumptions (the "Tax Benefits") for the purpose of determining its liability for Federal, state and local income taxes: (i) this Lease constitutes a true lease, (ii) the Lessor is the lessor and the Lessee is the lessee under this Lease,

(iii) the Lessor is entitled to the investment tax credit allowed under Section 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), in an amount equal to 10% of the entire Purchase Price of the Units and available based on the assumption that each Unit is placed in service by the Lessor in the taxable year of the Lessor during which the date of acceptance of such Unit occurs under this Lease (the "Investment Tax Credit"), (iv) the Lessor is entitled to (A) depreciate the entire Purchase Price of the Units using the double-declining balance method of depreciation authorized by Section 167(b)(2) of the Code from the date of acceptance of each Unit under this Lease over an asset depreciation range of 12 years which is the lower limit for an asset described in Asset Guideline Class No. 00.25 as provided in Rev. Proc. 77-10, (B) switch, without the prior consent of the Commissioner of Internal Revenue, to the sum-of-the-years-digits method of depreciation authorized by Section 167(b)(3) of the Code, when most beneficial to the Lessor, in accordance with Treas. Reg. § 1.167(a)-(11)(c)(1)(iii) and (C) adopt the modified half-year convention described in Treas. Reg. § 1.167(a)-(11)(c)(2)(ii) in accordance with Section 167(m) of the Code, (v) the Units may be depreciated to an estimated gross salvage value of 10% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price of such Units as provided in Section 167(f) of the Code (subsections (iv) and (v) of this paragraph being hereinafter referred to collectively as the "Depreciation Deduction"), (vi) the marginal corporate tax rates applicable to the Lessor's income shall not be less than the rates in effect as of the date hereof and (vii) all amounts includible in Lessor's gross income with respect to this Lease shall be treated as derived from or allocated to sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action, or fail to take any action or file any returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits (except that the Lessee may take such action as may be deemed by the Lessee to be necessary in consequence of, and file returns in connection with, any use of the Units outside the United States; provided, however, that the Lessee will remain liable for all its indemnities under this § 17) and that the Lessee will file such returns, take such action and execute such documents, and keep and make available for inspection and

copying by the Lessor such records (other than the Lessee's corporate income tax returns), as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee further agrees that by not later than the first date of acceptance of a Unit under this Lease it will deliver, or cause to be delivered, to the Lessor an opinion of an appropriate officer or engineer of the Lessee addressed to the Lessor and satisfactory in form and substance to the Lessor that the Units have a useful life of at least 19.5 years, that the Units will have a fair market value at the end of the original term of this Lease at least equal to 20 percent of the Purchase Price thereof without including in such value any increase or decrease for inflation or deflation during the term of this Lease and after subtracting from such value any cost to the Lessor for removal and delivery of possession of the Units to the Lessor at the end of the original term of this Lease and that the Units are not limited use property within the meaning of Rev. Proc. 76-30.

The Lessee represents and warrants that (i) no portion of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971, and the entire Purchase Price of the Units qualifies for the 10% Investment Tax Credit; (ii) at the time the Lessor becomes the owner of the Units, the Units will be "new section 38 property" within the meaning of Section 48(b) of the Code and the entire Purchase Price of the Units will qualify for the full 10% Investment Tax Credit; (iii) at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iv) at the time the Lessor becomes the owner of the Units, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto; (v) at all times during the term of this Lease, the Units will constitute "Section 38 property" within the meaning of Section 48(a) of the Code as in effect on the date hereof; (vi) the Lessee will not claim that it is the owner of the Units at any time prior to the exercise by the Lessee of any option granted to the Lessee under this Lease to purchase the Units; (vii) each item of income, deduction and credit of the Lessor in respect of this Lease will be allocable to or derived from sources within the United States; (viii) the basis of each Unit will be at least equal to its

Purchase Price; (ix) each Unit will be placed in service by the Lessor at the time such Unit becomes subject to this Lease; (x) the Units fall within Asset Guideline Class No. 00.25 and may be depreciated over 12 years; (xi) it is reasonable to estimate that each Unit will have a fair market value at the expiration of the original term of this Lease with respect to such Unit of at least 20% of the Purchase Price of such Unit (without including in such value any increase or decrease for inflation or deflation during such term and after subtracting from such value any cost to the Lessor for removal and delivery of possession of such Unit to the Lessor at the end of such term); (xii) it is reasonable to estimate that each Unit will have a useful life of 19.5 years; and (xiii) it is reasonable to estimate that each Unit will be useful or usable by the Lessor at the end of the original term of this Lease with respect to such Unit for purposes other than continued leasing or transfer to any member of the Lessee Group (as defined in Revenue Procedure 75-21) and no such Unit will be "limited use property" within the meaning of Revenue Procedure 76-30.

If the Lessor shall lose, or shall not have, or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture, all or any portion of the Tax Benefits with respect to all or part of any Unit due to (a) the sale or other disposition of any Unit or the interest of the Lessor therein after the occurrence of an Event of Default under the Lease, (b) an amendment to the tax laws or any regulations thereunder (including, without limitation, any change in the income tax rates under Federal or any applicable state or local laws from those in effect on the date hereof) which is adopted on or prior to the delivery date of any such Unit, (c) an amendment to the tax laws or any regulations thereunder (including, without limitation, any change in the income tax rates under Federal or any applicable state or local laws from those in effect on the date hereof) which is adopted subsequent to the delivery date of any Unit if the effective date thereof shall be on or prior to the delivery date of such Unit, (d) the incorrectness or inaccuracy in law or in fact of any representation or warranty made by the Lessee (including, without limitation, those made in the preceding paragraph of this § 17), or the breach by the Lessee of any of its agreements hereunder, or the incorrectness or inaccuracy of any statement made in the opinion delivered pursuant to the third paragraph of this § 17, or (e) any act or omission of the Lessee, whether or not such act or omission is permitted by

this Lease, then in any such case, (i) the Lessee shall pay the Lessor, on the first date provided in this Lease for the payment of installments of rental hereunder after the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided in the ninth and tenth paragraphs of this § 17, an amount (the "Lump Sum Payment") which (after deduction of all income taxes required to be paid by the Lessor on the receipt of such amount, under the laws of the United States or any political subdivision thereof, calculated on the assumption that such taxes are payable at the marginal tax rate assumed by the Lessor in originally evaluating this transaction) shall be equal to the sum of the Tax Payment (as defined in the ninth paragraph of this § 17) made by the Lessor plus all interest and penalties paid by the Lessor with respect to the Tax Payment and (ii) the rent set forth in § 3 hereof payable by the Lessee to the Lessor on each of the dates provided in this Lease shall be increased commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, by an amount which, when taken together with the rental installments due to be paid to the Lessor on such dates under this Lease, will in the reasonable opinion of the Lessor maintain the Lessor's after-tax rate of return on and rate of recovery of the Lessor's investment and the Lessor's annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder and under this Lease at the same level that would have been available if the Lessor had been entitled to utilization of all of the Tax Benefits. In the event that this Lease is terminated with respect to any Unit prior to the time the Lessee is obligated to make payments to the Lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the Lessee shall pay to the Lessor, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination and hereunder shall become fixed as hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence, and, in the case of a termination in connection with a Casualty Occurrence making necessary adjustments for any previous revision of the Casualty Values pursuant to the second sentence of the seventh paragraph of this § 17) as shall be necessary in the reasonable opinion of the Lessor to maintain the Lessor's after-tax rate of return on and rate of recovery of the

Lessor's investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder and under this Lease at the same level that would have been available if the Lessor had been entitled to utilization of all such Tax Benefits.

If any item of income, credit or deduction with respect to any Unit shall not be treated as derived from or allocated to sources within the United States in the Lessor's Federal income tax return for a given year, then the Lessee shall pay to the Lessor on the first day thereafter provided for in this Lease for the payment of installments of rental hereunder, an amount which, after deduction of all income taxes required to be paid by the Lessor on the receipt of such amount under the laws of the United States or any political subdivision thereof (calculated on the assumption that such taxes are payable at the highest then applicable marginal tax rate), shall be equal to the foreign tax credits which the Lessor would have been entitled to with respect to such taxable year but for the Lessor's participation in the transactions contemplated by this Lease plus interest and penalties, if any, associated with such loss. The Lessee will maintain records sufficient to verify its use of the Units outside of the United States, which use shall, as warranted above in this § 17, in no event be the result of the Units having been placed in regular assigned service outside of the United States, and Lessee shall furnish such records to the Lessor for Federal income tax audit purposes, upon receipt of 30 days' written notice.

The Lessee acknowledges that the schedule of Casualty Values included in § 7 of this Lease has been computed on the assumption that the Lessor shall be entitled to the Tax Benefits. Accordingly, in the event the Lessee becomes obligated under the provisions of this Lease to pay additional sums to the Lessor pursuant to this § 17, the said schedule of Casualty Values shall be revised as may be necessary in the reasonable opinion of the Lessor so that the amount payable by the Lessee in connection with any Casualty Occurrence shall be sufficient to maintain the Lessor's after-tax rate of return on and rate of recovery of the Lessor's investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) at the same level that would have been available to the Lessor upon payment of Casualty Value had the Tax Benefits been allowed in full.

The revised schedule of Casualty Values shall be applied to any payment of Casualty Value paid after the liability of the Lessee hereunder shall become fixed as hereinafter provided regardless of the date of the Casualty Occurrence. Furthermore, with respect to any previous payment of Casualty Value under this lease by the Lessee after a Casualty Occurrence but prior to the aforementioned revision of the Casualty Value with respect to such Unit, the Lessee shall pay to the Lessor, in a lump sum, the additional amount, in excess of the Casualty Value actually paid, that Lessee would have been required to pay had the liability of the Lessee hereunder become fixed prior to the date of the original payment, and had the Schedule of Casualty Value, accordingly, been revised as provided above.

Anything in the fifth paragraph of this § 17 to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for herein if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Tax Benefit solely because one or more of the following events (hereinafter called "Excluded Events") has occurred:

- (i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 of this Lease, as the same may be revised pursuant to the preceding paragraph;

- (ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor (whether voluntary or involuntary) of any interest in such Unit or in the rentals therefor under this Lease unless, in each case, an Event of Default under this Lease shall then have occurred and be continuing;

- (iii) the failure of the Lessor to timely claim its portion of the Investment Tax Credit or the Depreciation Deduction, as applicable, in its Federal income tax return for the appropriate year unless the Lessor shall have received an opinion of its independent tax counsel to the effect that the Lessor is not entitled to claim

such Investment Tax Credit or Depreciation Deduction or the failure of the Lessor to follow proper procedure in claiming the Tax Benefits; or

(iv) the failure of the Lessor to have sufficient liability for tax against which to credit its portion of such Investment Credit or sufficient income to benefit from the Depreciation Deduction, as applicable.

In the event a claim shall be made against the Lessor which, if successful would result in payment by the Lessee of amounts pursuant to the fifth paragraph of this § 17, and if, in the opinion of the Lessee's in-house tax counsel or, in the event the opinion of such counsel is not acceptable to the Lessor, independent tax counsel who is acceptable to the Lessor selected by the Lessee (herein referred to as "Counsel") a bona fide defense to all or a portion of such claim exists, the Lessor shall, upon the request of and at the expense of the Lessee, contest such claim in such forum as the Lessor, in its sole judgment, shall select; provided, however, that the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Tax Benefits with respect to any Unit (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination (as such term is defined in the next succeeding paragraph hereof) shall be adverse to the Lessor the amounts payable hereunder shall be computed by the Lessor as of the date of such Final Determination and the Lessee shall on the rental payment date under this Lease next succeeding such Final Determination (i) pay to the Lessor the amount of the Lump Sum Payment plus interest thereon from the date the Tax Payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the rate of interest charged by First National City Bank to its prime commercial customers on short-term unsecured borrowings (the "Prime Rate") in effect on the date of such Final Determination; and (ii) commence

payment of the increased rent payable pursuant to the fifth paragraph of this § 17. If the Lessor makes such Tax Payment prior to contesting the matter and then either sues for a refund or does not contest such Tax Payment because the Lessee has not requested the Lessor to do so in accordance with the terms of this paragraph, the Lessee shall on the first rental payment date under this Lease after such Tax Payment (i) pay to the Lessor the amount of the Lump Sum Payment plus interest thereon from the date such Tax Payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the Prime Rate in effect on the date of such Final Determination; and (ii) commence payment of the increased rent payable pursuant to the fifth paragraph of this § 17. If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the amount of the tax indemnity theretofore paid by the Lessee to the Lessor in respect of such matter (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the interest rate then being paid on tax overpayments by the United States for the period from the date such sums were paid to the Lessor by the Lessee to the date the Lessor pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or interest refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made with respect to the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods. Notwithstanding the foregoing, the Lessor may elect not to contest (or to discontinue any contest in respect of) any such claim which it is otherwise required to commence in accordance with this paragraph, if the Lessor waives the Lessee's liability to indemnify the Lessor with respect to the Tax Benefits involved in respect of such claim.

"Final Determination" for the purpose of this Agreement, means a final decision of the Internal Revenue

Service or a court of competent jurisdiction after all allowable appeals requested by the Lessee pursuant to the preceding paragraph (other than an appeal or petition for certiorari to the Supreme Court of the United States unless the Lessor elects to file such appeal or petition) have been exhausted by either party to the action. Except as contemplated by the preceding paragraph, neither concession by the Lessor of any of the aforementioned Tax Benefits in the overall settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level nor the failure to recover a refund in whole or in part with respect to the disallowance of such Tax Benefit which is the result of a setoff against a claim for refund based upon the loss of such Tax Benefits where the matters set off do not relate to such Tax Benefits will constitute an adverse "Final Determination" causing the aforementioned additional payments to accrue to the Lessor.

In the event and to the extent that the cost or value of any replacement, improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease or any agreement contemplated by the Participation Agreement (hereinafter called "Additional Expenditures") made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee hereby agrees that it will pay to the Lessor on each of the dates provided in this Lease for payment of the installments of rental hereunder in respect of such Unit commencing with the first such date following the date on which the Lessor furnished written notice to the Lessee that such inclusion is required, such sums which, when taken together with the rental installments due on such dates under this Lease in respect of such Unit, will, in the reasonable opinion of the Lessor maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder and under this Lease at the same level that would have been available if the cost or value of such Additional Expenditures had not been treated as income to the Lessor.

In the event that the Lessee shall pay all or any portion of any installment of rent under this Lease prior to the date upon which such payment is herein required to be made, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes and other charges in respect

of the receipt of such amount under the laws of any Federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof (calculated on the assumption that such taxes are payable at the highest then applicable marginal tax rate), shall be equal to the excess of (A) the taxes and other charges payable by the Lessor in that year as a result of the receipt of such installment of rental over (B) the taxes and other charges that would have been payable in that year by the Lessor had such installment of rent been paid by the Lessee on the date upon which such payment is herein required to be made. To the extent that the Lessor realizes an offsetting benefit in a subsequent year, an offsetting repayment will be made in an amount which preserves the Lessor's yield and does not exceed the amount paid to the Lessor under this provision.

In the event that the Tax Benefits with respect to any Unit as set forth in the first paragraph of this § 17 increase due to an amendment to the tax laws which has an effective date on or prior to the delivery date of such Unit (whether or not adopted on or prior to such delivery date) the installments of rent payable under this Lease shall be adjusted to cause the Lessor's after-tax rate of return on and rate of recovery of investment and annual cash flows (computed otherwise on the same assumptions as utilized by the Lessor in originally evaluating this transaction) to remain at the same level that would have been available to the Lessor had the Tax Benefits not so increased, provided, however, that no reduction of any installment of rent payable under this Lease shall be made (a) if the Lessor, for whatever reason, chooses not to take advantage of any such increase in the Tax Benefits or (b) to the extent that any such reduction would result in the transaction's not meeting the economic tests set forth in Revenue Procedures 75-21 and 75-28.

The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

For purposes of this § 17, the term "Lessor" shall include all members of any affiliated group of which the Lessor is a member if consolidated, joint or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment of rentals and other obligations due hereunder

shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 12% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. Quiet Enjoyment and Miscellaneous. Notwithstanding the disclaimers contained in § 9 hereof, the Lessor covenants that if, and so long as, the Lessee keeps and performs each and every covenant, condition and agreement to be performed or observed by it hereunder, the Lessee shall quietly enjoy the Units leased hereunder without hindrance or molestation by the Lessor or any other person lawfully claiming the same by, through or under the Lessor.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class certified, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, and

(b) if to the Lessee, at 3253 East Trafficway, Springfield, Missouri 65802, Attention of Vice President--Finance,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 21. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 22. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 24. Right to Perform. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate of 12% per annum shall be payable by the Lessee upon demand. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee hereunder.

§ 25. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, warranties, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by the Lessor in its individual capacity, or for the purpose or with the intention of binding the Lessor personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor on account of any representation, warranty, undertaking or agreement herein of the Lessor, either express or implied, all such personal liability, if any, being expressly waived and released by the Lessee.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of

the date first above written.

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee as aforesaid,

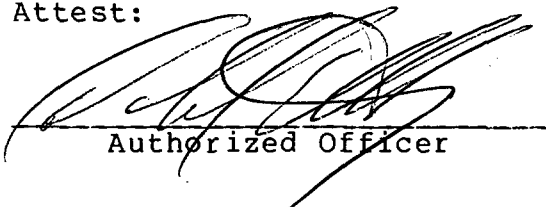
by



Authorized Officer

[Corporate Seal]

Attest:


Authorized Officer

ST. LOUIS-SAN FRANCISCO
RAILWAY COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF CONNECTICUT,)
) ss.:
 COUNTY OF HARTFORD,)

On this 14th day of July 1978, before me personally appeared E. W. Kawan, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara S. Kacich
 Notary Public

BARBARA S. KACICH
 NOTARY PUBLIC

MY COMMISSION EXPIRES MARCH 31, 1982

[Notarial Seal]

My Commission expires

STATE OF MISSOURI,)
) ss.:
 CITY OF ST. LOUIS,)

On this day of 1978, before me personally appeared , to me personally known who, being by me duly sworn, says that he is President of ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

 Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

| <u>Type</u> | <u>Quantity</u> | <u>Place of Delivery</u> | <u>Lessee's Road Numbers (Both Inclusive)</u> | <u>Unit Base Price</u> | <u>Total Base Price</u> |
|--|-----------------|------------------------------|---|--------------------------------|---------------------------------|
| 1,000 h.p. diesel electric locomotive | 8 | St. Louis, Missouri | 950-957 | \$625,000 | \$5,000,000 |